add to Lawtech reserve file

RE: Attached Order dated December 29, 1982

The attached order is very relevant to my case. It relates to the "megabuck" cases which were a part of the fraud/collection cases assigned to me at the Department of the Interior.

Shortly after starting on this assignment, I discovered approximately $60 million which could be collected by the government. These were civil penalties due the government from the years 1978-81, but no effort had ever been made to collect them. (Indeed, very little was know about these cases until my involvement.)

I strongly recommended the prompt collection of these monies as well as the perhaps $100 million in taxes/fees due the government in other cases in which coal operators were clearly defrauding the government by filing false returns, etc..

My supervisors made it clear that they had no intention of vigorously pursuing collection of the monies due the government. Although I was assigned the defense of the "megabucks" cases, I made it clear that I believed our position was indefensible and that the courts could very well order us to collect this money, thereby damaging the credibility of the Department. My supervisors' response was to take me off the cases and to continue to attempt to defend them. The attached order speaks for itself as to the final disposition of this case.

Dear Morton -

Thought this would be helpful to you.

I'll call and explain this to you.

My best,

Vince

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAVE OUR CUMBERLAND MOUNTAINS, INC., et al.,

Plaintiffs,

v.

JAMES G. WATT, et al.,

Defendants.

Civil Action No. 81-2134

FILED

DEC 29 1982

JAMES F. DAVEY, Clerk

ORDER

In accordance with this Court's Memorandum Opinion of September 30, 1982, and upon consideration of Defendants' Motion for Reconsideration and Plaintiffs' Opposition thereto and the entire record herein, it is this 28th day of December, 1982, ADJUDGED, ORDERED and DECREED that:

1. Section 518(h) of the Surface Mining Control and Reclamation Act of 1977 imposes a mandatory duty upon the Secretary of the Interior to assess a civil penalty of not less than $750 per day against any coal mine operator subject to regulation under the Act who fails to correct a violation cited under Section 521(a) of the Act, 30 U.S.C. Section 1271(a);

2. Since the initiation of the instant suit, the Office of Surface Mining ("OSM") has assessed formerly unassessed failure-to-abate cessation orders and is hereby ordered to assess any remaining unassessed failure-to-abate cessation orders and proceed with collection activities on all such cases;

3. The defendants are permanently enjoined, and directed, to remain current on the timely assessment of penalties according to Section 518(h) of the Surface Mining Control and Reclamation Act of 1977 and regulations;

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4. 30 C.F.R. 723.15(b)(2) imposes a mandatory duty upon the Secretary of the Interior and the Director of OSM to take enforcement action pursuant to Sections 518(e), 518(f), 521(a)(4) or 521(c) of the Surface Mining Control and Reclamation Act of 1977, against any coal mine operator subject to regulation under the Act who fails to correct a violation cited under Section 521(a) of the Act for more than thirty (30) days beyond the expiration of the period prescribed for its correction, and to do so within thirty (30) days thereof;

5. The defendants are permanently enjoined, and directed to take mandatory enforcement action pursuant to 30 C.F.R. 723.15(b)(2) (or, where applicable, the identical 30 C.F.R. 845.15(b)(2) -- when the underlying violation has been issued during the permanent program). OSM is directed to review each of the enforcement files in which a cessation order has been issued and the violation remains unabated, and to determine the appropriate alternative enforcement action (including injunction, individual civil penalties, criminal action, suspension or revocation of permit) for any case determined to have been unabated after thirty (30) days. The defendants are directed to pursue immediately and diligently all such enforcement action as required to reduce and eliminate the backlog of pending cases, taking all such action as required by the regulation. Defendants are directed to allocate and commit sufficient personnel and resources to assure such results and they shall inform the Court of the level of resources allocated in the report required by paragraph 7 of this Order;

6. OSM will review each failure-to-abate cessation order identified in the review conducted pursuant to paragraph 5 of this Order and determine whether the cessation order has been previously terminated; review the file for each cessation order not previously terminated; and determine on the basis of factors set forth in the regulation whether to:

a. seek injunction under 521(c);

b. file a criminal action under 518(e);

c. assess and file action to charge the civil penalty against corporate officers under 518(f); and/or

d. seek suspension or revocation of the permit under 521(a)(4).

7. Beginning March 1, 1983, and continuing thereafter, the defendants shall file bi-monthly reports with the Court setting forth the actions taken by the Department in that time period to 1) assess and collect Section 518(h) civil penalties under the Court's Order and 2) to report on the alternative enforcement actions it has taken under paragraphs 5 and 6 of this Court's Order. This report will set forth all penalties assessed to date, when each was assessed and what actions have been taken to collect each penalty in the time period covered by the report. The report will further identify each cessation order which has not been terminated and what enforcement action has been taken as to the case. The plaintiffs shall have thirty (30) days from the filing of each report in which to review the actions of the Department to determine whether the Department has complied with the Court's Order, and to file any objections thereto with the Court. Plaintiffs may apply for an award of fees and expenses for work reasonably done in connection with the implementation of this Court's Order.

8. The Court will retain jurisdiction. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs under Section 520(d) of the Surface Mining Control and Reclamation Act of 1977 for work done to date. Plaintiffs are directed to file an appropriate motion for award of fees and expenses, which motion will also include the amount claimed.

9. Defendants' Motion for Reconsideration is denied.

Entered: December 28, 1982

Barrington D. Parker

Barrington D. Parker
United States District Judge

MEMORANDUM

OCT 2 3 1981

TO: Deputy Director
Office of Surface Mining

FROM: Associate Solicitor
Division of Surface Mining

SUBJECT: "Megabucks" Case Lawsuit; Civil Action #81-2134

Attached is a Request for Admissions which necessitates our immediate attention. Vince Laubach is handling this matter for our office and needs to know who you wish to designate from your office to supply the necessary information. Could you have the person who is to supply this factual imput contact Vince Laubach as soon as possible? His phone number is 343-4671.

We appreciate your cooperation.

Donald R. Tindal

Donald R. Tindal

Attachments

cc: Associate Solicitor, DSM
Assistant Solicitor, L & E Branch
Assistant Solicitor, Governmental Relations Branch
All Field Solicitors

bcc: Docket DSM Chron
Sol DSM Subj
LAUBACH:jh:10/22/81 - EnfDisk 3

Parker, J.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAVE OUR CUMBERLAND MOUNTAINS, INC., and COUNCIL OF SOUTHERN MOUNTAINS, INC., Plaintiffs, v. JAMES G. WATT, Secretary of the Interior, and RICHARD HARRIS, Director, Office of Surface Mining, Defendants.	Civil Action No. 81-2134

FILED

OCT 19 1981

JAMES F. DAVEY, Clerk

PLAINTIFFS' REQUEST FOR ADMISSION

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiffs hereby request that the defendants admit, for the purpose of this action only, within thirty (30) days after service of this request, the truth of each of the following statements:

1. Since 1978, the Secretary of the Interior ("Secretary") and the Director of the Office of Surface Mining Reclamation and Enforcement ("Director"), have issued notices of violation to operators of surface coal mining operations, pursuant to Section 521(a)(3) of the Surface Mining Control and Reclamation Act of 1977 ("Act").

2. Pursuant to Section 521(a)(3) of the Act, the notices of violation issued by the Secretary and Director to operators of surface coal mining operations since 1978 have required the abatement of the violations cited and have prescribed the period of time during which abatement of each cited violation must be accomplished.

3. Operators who failed to abate cited violations within the period prescribed in the notices of violation issued to them are subject to cessation orders issued by the Secretary and the Director pursuant to Section 521(a)(3) of the Surface Mining Act. The Secretary and the Director have issued cessation orders pursuant to that Section.

4. Section 518(h) of the Act requires the Secretary to assess a civil penalty of no less than $750/day for failure to abate a cited violation within the period prescribed.

5. In the period 1978-1981 the Secretary and the Director failed to issue any Section 518(h) civil penalty assessments to more than 750 operators who were issued cessation orders pursuant to Section 521(a)(3) of the Act for failure to abate cited violations.

6. A total of over 900 instances exist in which operators who were issued cessation orders pursuant to Section 521(a)(3) of the Surface Mining Act in 1978, 1979, or 1980, were not issued Section 518(h) civil penalty assessments pursuant to those cessation orders.

7. The cessation orders for which no civil penalties were assessed comprised a total of over 1,900 separate unabated violations.

8. The total unassessed civil penalty for the Section 521(a)(3) failure-to-abate cessation orders issued to operators since 1978 amounts to approximately $44,000,000.

9. The Secretary and the Director have deliberately chosen not to assess the civil penalties due in 1978, 1979, 1980, and 1981 for the Section 521(a)(3) cessation orders referenced in #5, #6, #7, and #8 above.

10. No effort has been made by the Secretary and the Director to collect the unassessed civil penalties amounting to approximately $44,000,000.

11. In more than half of the instances referenced in #5, #6, #7 and #8 above in which no Section 518(h) civil penalty was ever assessed, the operator has continued for more than thirty (30) days after October 6, 1980 to fail to abate the cited violations.

12. Several hundred operators who were assessed Section 518(h) civil penalties in the period 1978-1980 (prior to October 6, 1980) for failure to abate cited violations have continued for more than thirty (30) days after October 6, 1980 to fail to abate the cited violations.

13. Over 90 operators who were issued Section 521(a)(3) failure-to-abate cessation orders after October 6, 1980, have continued for more than thirty (30) days after the issuance of such orders to fail to abate the cited violations.

14. Since October 6, 1980, the Secretary and the Director have initiated no criminal proceedings against an operator pursuant to Section 518(e) of the Surface Mining Act within thirty (30) days of an operator's continuing failure to abate a violation for more than thirty (30) days after issuance of a Section 521(a)(3) failure-to-abate cessation order.

15. Since October 6, 1980, the Secretary and the Director have initiated no criminal proceedings pursuant to Section 518(e) of the Surface Mining Act.

16. Since October 6, 1980, the Secretary and the Director have initiated no individual civil or criminal penalty proceedings against an operator pursuant

to Section 518(f) of the Surface Mining Act within thirty (30) days of an operator's continuing failure to abate a violation for more than thirty (30) days after issuance of a Section 521(a)(3) failure-to-abate cessation order.

17. Since October 6, 1980, the Secretary and the Director have initiated no permit revocation proceedings against an operator pursuant to Section 521(a)(4) of the Surface Mining Act within thirty (30) days of an operator's continuing failure to abate a violation for more than thirty (30) days after issuance of a Section 521(a)(3) failure-to-abate cessation order.

18. Since October 6, 1980, the Secretary and the Director have initiated no permit revocation proceedings pursuant to Section 521(a)(4) of the Surface Mining Act.

19. Since October 6, 1980, the Secretary and the Director have filed no injunction actions against an operator pursuant to Section 521(c) of the Surface Mining Act within thirty (30) days of an operator's continuing failure to abate a violation for more than thirty (30) days after issuance of a Section 521(a)(3) failure-to-abate cessation order.

20. In 1981, the Secretary and the Director have filed fewer than ten (10) injunction actions of any kind pursuant to Section 521(c) of the Surface Mining Act.

21. Since October 6, 1980, the Secretary and the Director have established no formal system for evaluating and initiating additional enforcement action pursuant to Section 518(c), 518(f), 521(a)(4) and 521(c) of the Surface Mining Act, against operators who have failed to abate cited violations for more than thirty (30) days after the issuance of a failure-to-abate cessation order.

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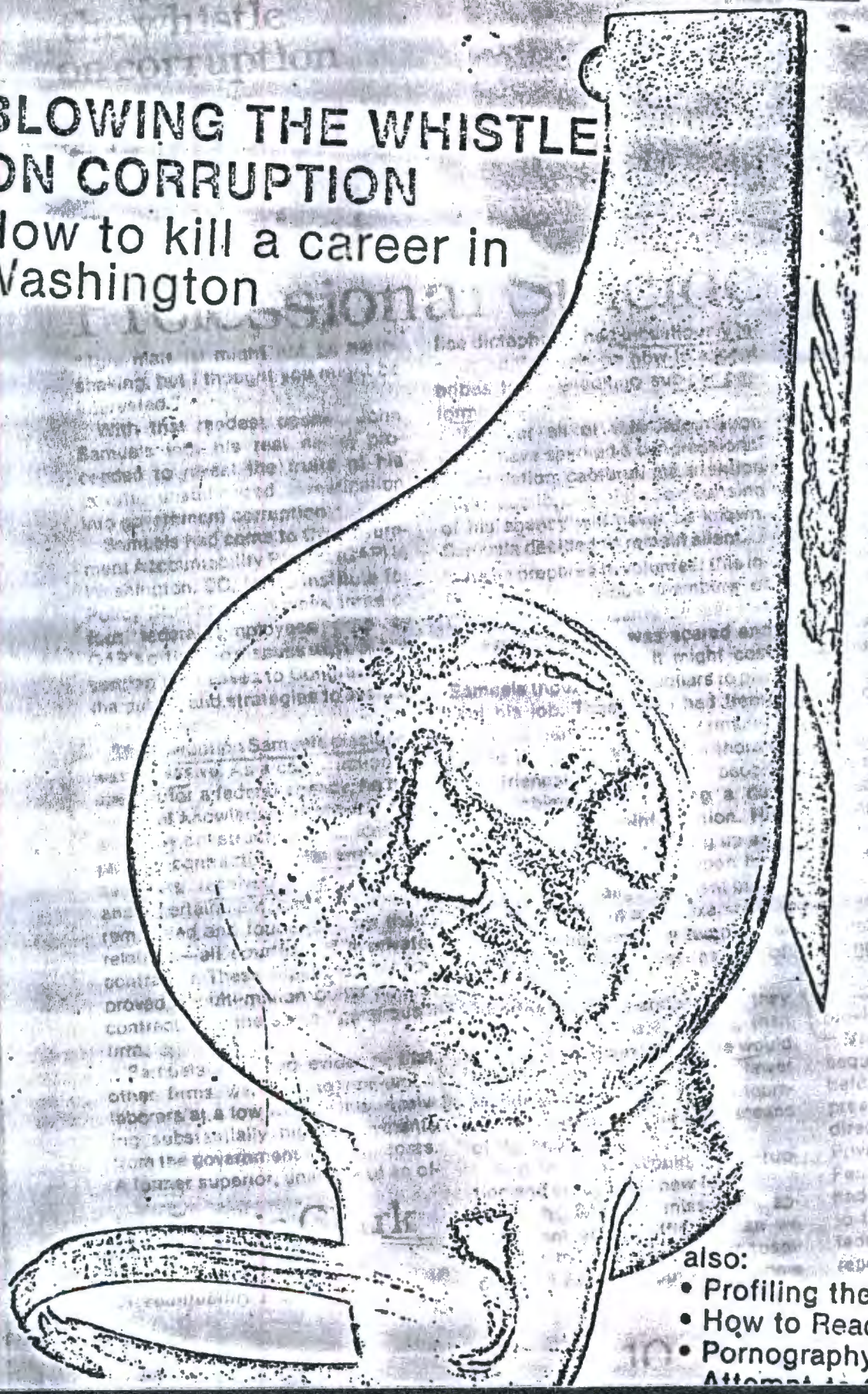
ATTORNEYS FOR PLAINTIFFS

BARRISTER

BLOWING THE WHISTLE ON CORRUPTION

How to kill a career in Washington



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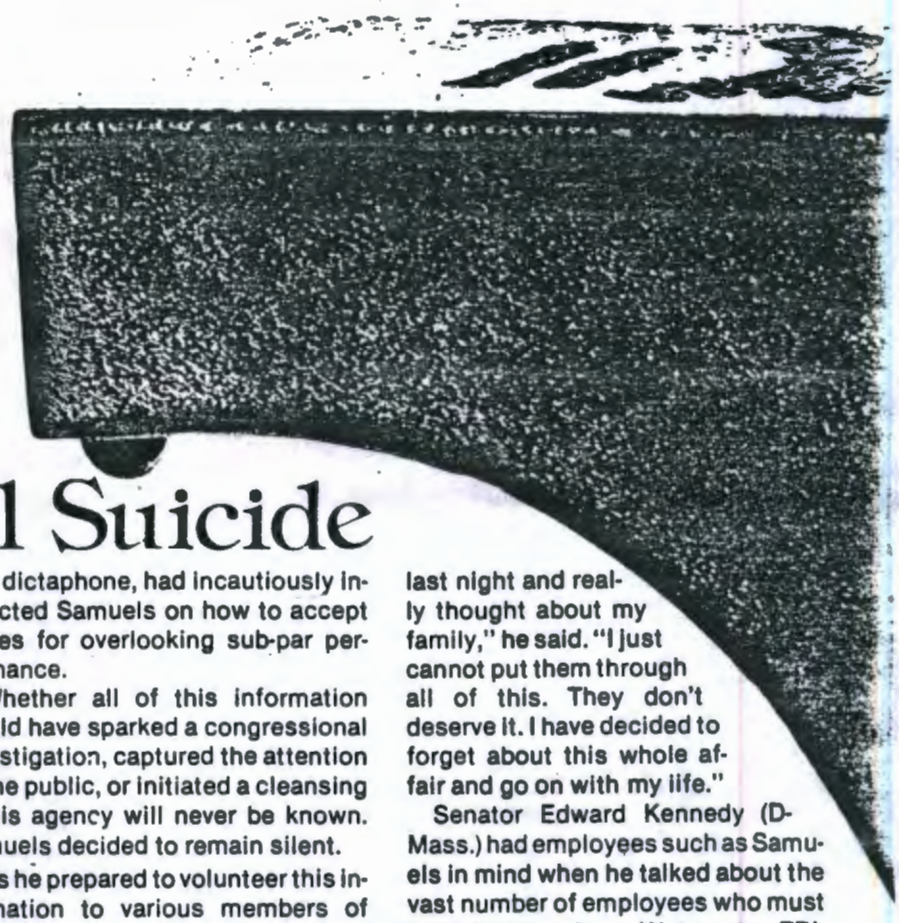
- Profiling the Criminal Mind
- How to Read a Juror
- Pornography: One City's

Why blowing the whistle on corruption becomes

The Sound of Professional Suicide



"This material might not be earth-shaking, but I thought you might be interested."

With that modest opener, John Samuels (not his real name) proceeded to reveal the fruits of his private, unauthorized investigation into government corruption.

Samuels had come to the Government Accountability Project (GAP) in Washington, DC, at the Institute for Policy Studies. Each week three or four federal employees drop by GAP's offices to discuss ways of presenting their cases to Congress and the public, and strategies to avoid or fight reprisals.

The corruption Samuels disclosed was pervasive. As a construction inspector for a federal agency, he had personal knowledge of shoddy and deficient construction practices by private contractors. He knew his superiors received free vacations and entertainment, had their homes remodeled and found jobs for their relatives—all courtesy of a private contractor. These superiors later approved a multi-million dollar no-bid contract with the same "generous" firm.

Samuels also had evidence that other firms were hiring non-union laborers at a low wage while receiving substantially higher payments from the government for labor costs. A former superior, unaware of an office dictaphone, had incautiously instructed Samuels on how to accept bribes for overlooking sub-par performance.

Whether all of this information would have sparked a congressional investigation, captured the attention of the public, or initiated a cleansing of his agency will never be known. Samuels decided to remain silent.

As he prepared to volunteer this information to various members of Congress, he became tense and uneasy. His family was scared and the fears were valid. It might cost Samuels thousands of dollars to protect his job. Those who had freely provided Samuels with information would probably recant or withdraw their friendship. A number of people might object to his using a dictaphone to gather information. His agency would start covering up and vent its collective wrath upon him. The entire federal government might decide to use him as an example to all those who might be tempted to launch unorthodox investigations of their own.

As for reporters and writers, they would gather for a few days, then move on to the next story. He would be left without a job, with fewer friends, with massive battles looming, and without the financial means of fighting them.

And for what? Would the corruption end or just take new forms?

Finally, Samuels missed an appointment at our office. When we called him, he confirmed our suspicions. "I am sorry, but I went home last night and really thought about my family," he said. "I just cannot put them through all of this. They don't deserve it. I have decided to forget about this whole affair and go on with my life."

Senator Edward Kennedy (D-Mass.) had employees such as Samuels in mind when he talked about the vast number of employees who must have known about Watergate, FBI, and CIA illegalties, and other political abuses:

> "(W)e should ask ourselves why none of the thousands of honest, loyal, and sensitive federal employees who knew or suspected such misconduct did not stand up and say, 'Stop. This is wrong.' And why none of them . . . were willing to tell the Congress and the American people what was happening."

The answer to that question requires only a review of what happens to those who *do* say, "Stop. This is wrong." They usually pay a heavy price for their fidelity to the public trust. Dr. Philip Vargas' experiences provide one such example.

Vargas also thought about the consequences of blowing the whistle before he decided to fight the suppression of a government report. As director of the Confidentiality and Privacy Study for the Commission on Federal Paperwork, he and his staff had prepared an exhaustive study into the information practices of the federal government. In particular, the report condemned the illegitimate

by Louis Clark

Staff attorney. Government Accountability Project

Alfred Gescheidt/Henry Tyler Locke

circumvention of the Freedom of Information and Privacy Acts by federal agencies.

"The deeper we dug into the information practices (of the government), the more painfully aware I became that many officials were not going to like what we were discovering," Vargas said in describing his motivation. "When the storm began to swirl, I thought of my father. He was a simple man, a migrant worker who could neither read nor write. But, you know, he had more integrity in his little finger than some very influential people in this town (Washington) have in their entire bodies.

"I have a doctorate and a Harvard law degree and neither mean a thing. I am a failure unless I can look into my son's eyes, like my father could mine. You see, if I had gone along with 'the program' I would not have deserved my son's love and respect." Now a year has passed since Vargas became the first whistleblower to be ousted during President Carter's administration. Vargas disclosed his report to Congress and the press, where it created more interest, greater praise and far more excitement than its watered-down, innocuous official counterpart. That official study was filed and forgotten.

As for Vargas, after his firing he soon learned he would not receive help from the White House. Despite an impressive and distinguished background, he cannot find work. Recently he lost his home when he could not meet the mortgage payments. The Civil Service Commission took 10 months to decide that it did not have jurisdiction

Asked if despite his woes, he would recommend whistleblowing to others, he replied with a laugh, "I would not recommend it. But if I had it to do over, I would do it again."

Goverment whistleblowers are public employees who disclose information to the public about government activity which is illegal, inefficient or wasteful, and which endangers the health, safety or freedom of the American public. Many of the revelations of the past decade provide a testament to the power of the

individual conscience to combat the forces of institutionalized corruption, wrongdoing and neglect.

Defense Department analyst Ernest Fitzgerald testified about the $2.5 billion cost overruns in the C5A aircraft program. In describing the pressure to mislead Congress, he recalls, "I was supposed to say that we were not really sure the cost overruns existed. But we were sure. I was (then) supposed to say that maybe we had a little overrun, but that the C5A was a grand machine. The fact is, it is not a grand machine. It is one of the biggest technical disasters in history, exceeded only by a few other contracts we have had with still other big aerospacers."

Dr. J. Anthony Morris, a virologist for the Food and Drug Administration, objected to the swine flu immunization program as dangerous and unnecessary. Beginning in 1960, his job was to study the risks and benefits of numerous vaccines. Over the years his research identified flu vaccines as ineffectual and highly risky—with a possible paralytic reaction as one of the dangers.

Ignoring Morris, the FDA began a mass innoculation of the American public. As the deaths, injuries, and lawsuits mounted, it became increasingly evident that the program was a fiasco. Critics, such as Morris, finally prevailed and the program was halted.

When HEW's supplemental appropriations reached the floor of the House on July 20 of this year, the vote was 2 to 1 in favor of deleting funds for a new flu vaccination program. As Rep. John Dingell (D-Mich.) said, "This is swine flu II, brought to you by the same people who brought you the (original) swine flu fiasco." He added that liability costs of the swine flu caper had cost taxpayers $1.2 billion.

Stanley Mazaleski, a scientist for the National Institute of Occupational Safety and Health, pressed for tighter controls over the chemicals chloroform and cadmium. His data indicated an increased risk of cancer among workers exposed to both chemicals. When NIOSH did not implement tighter standards, Mazaleski went public. Afterwards, medical research corroborated the link between cancer and cadmium.

Arthur Palman, a regional personnel officer, was responsible for implementing civil service laws and regulations at the General Services Administration. In 1969 he first observed the eroding of the merit system at GSA. After four years of internal protest, he finally requested the Civil Service Commission to investigate the "spoils system" which by that time had supplanted the merit system.

The commission conducted "the most exhaustive investigation in its history." After affirming that a political patronage cabal had subverted the law, the commission recommended the firing of five senior officials—including two presidential appointees—and the suspension of three others. Later, the perpetrators of the abuses escaped unscathed when the commission dropped the charges.

These four whistleblowers adhered to the Code of Ethics for Government Service, adopted by the 85th Congress. The code affirms that "any person in government should: put loyalty to highest moral principles and to country above loyalty to persons, party or government department." It concludes with the admonition to "uphold these principles, ever conscious that public office is a public trust."

The courage and determination of whistleblowers to act against the norm is what ignites the public imagination. To the beseiged bureaucrat they are boat rockers. To others they are informers and tattle-tales. And to the Carter administration, they are an inconvenience. In actual effect, they are the agents of accountability.

The government does not respond to the problems raised by whistleblowers. Instead, the government makes the whistleblower the problem.

Despite universal recognition of the truth of his allegations, Fitzgerald was ousted in a one-man "reduction in force." After a four-year legal battle, he won reinstatement to a "do-nothing" position in government. The fight to regain his former position is entering the ninth year—at a legal cost of half a million dollars.

Morris—fired six days after objecting to the swine flu caper—and Mazaleski—fired two weeks after his public protests—were charged with "substandard performance" and "insubordination." They are both fighting for reinstatement.

The administrator of GSA called Palman, in effect, a racist, and peddled false and libelous material to Congress and the press. With letters of praise from every senior black employee within his region, Palman withstood the smear. The press, angry at the attempted manipulation, turned its guns upon the administrator. But despite this external support, Palman later was forced to retire.

In their campaign to identify, defuse, isolate and repudiate the whistleblower, agencies draw upon other retaliatory options besides firing. A few such techniques are:

1) The phony open door.

When John Stockwell, a former CIA case officer, charged the CIA with corrupt practices and publically resigned, the agency apparently decided not to be caught off guard again by disgruntled employees. Citing Stockwell's public letter of resignation, CIA Director Admiral Stansfield Turner established "an open door policy." In a series of directives and memoranda, Turner instructed all employees to bring any evidence of questionable or wrongful activity to his personal attention.

Donald Jordan, 26-year veteran of the agency with outstanding performance evaluations, notified the director of the agency's use of "soft files"—unofficial, secret information maintained on CIA employees who are internal critics. Within days, two agents from Turner's office paid Jordan a visit. "You have drawn your last paycheck," Jordan recalls their message. "I had 30 minutes to leave the premises," he added, "about a minute per year of public service."

2) Psychiatric fitness for duty examination.

In March of this year, the House Subcommittee on Compensation and Employee Benefits held hearings on the mandatory fitness for duty examination. At the hearing, Congressman Walter Fauntroy (D-DC) reported the findings of his own hearings on abuses in administering mandatory psychiatric examinations. Typical of the abuses he recounted were federal employees who, after filing discrimination complaints or making suggestions about how to end waste, were ordered to take an examination. Employees had told Fauntroy that some supervisors frequently use the examinations as a

reprisal against disfavored employees who had fallen out of favor.

He noted that the order to take the examinations could not be appealed and disobeyance was grounds for dismissal. He concluded that the examinations had a "severe chilling effect on the free flow of ideas and opinions from lower level to upper level employees" and "have been used to suppress complaints. . . ."

He further testified: "The only reason that I found for examinations being given is that the person had the audacity to have a sense of conscience, to be aggressive and assertive in their rights, and wanted to see the government perform well within their own particular area of work. So that if you were not docile, if you were aggressive enough to assert that there ought to be some improvements . . . or if you were aggressive in your own aspirations for promotion or pursuing disdrimination complaints, somebody decided that you had to be crazy. For example, if you thought the government should be saving money, you had to be crazy."

Charles Olson is a whistleblower whose career was destroyed by the dreaded "psychiatric fitness for duty" examination. An electronics engineer for the Defense Department, he traveled across the country evaluating munitions contracts. He sought ways to save taxpayers' money and to avoid costly delays.

The Defense Department was not pleased, for his cost-consciousness was embarrassing. He was fired, but ordered reinstated six months later by the Civil Service Commission. Upon his return he was ordered to take a psychiatric examination. It took one psychiatrist 20 minutes to destroy a distinguished career. Olson was labeled a "chronic paranoid."

Eventually he won his battle against that charge as well. The Civil Service Commission found the evidence of instability insufficient, but the brand "mentally unfit" remains in his personnel file—a weapon designed to follow him wherever he goes and subvert his opportunity for reemployment. Olson is a victim of what he calls "bureaucratic tyranny, psychological warfare and political psychiatry."

3) Transfer and reassignment.

The Malek Manual, Nixon's formula for politicizing the federal civil service, described transfer and reassignment as two effective methods to eliminate "undesirables." The manual suggested transferring such employees to "places where they would rather resign than go."

Sandy Kramer and Valerie Koster disclosed the substandard care and unhealthy conditions at an Indian health service hospital in Shiprock, New Mexico. An investigation substantiated the charges, but the nurses were fired nonetheless. When they won an appeal, they were transferred to Oklahoma and Wyoming. They did not want to go, and lost their jobs when they refused to transfer.

Dr. John Nester incurred the wrath of his agency, the Food and Drug Administration, when he charged—at a Senate hearing—that his agency was a captive of the drug industry. For years he had challenged both his own agency and drug companies over the approval of new drug applications, and five times the agency had reassigned him to jobs outside his area of expertise. Finally, after exhaustive battles, the head of the FDA apologized for the reassignments and moved him back to drug evaluation.

4) Other methods.

Negative performance ratings, elimination of staff support, suspensions, demotions, denial of access to meetings, unpleasant or impossible tasks, and removal to smaller offices are additional methods of reprisal. Used in combination, these actions alienate and frustrate critics and whistleblowers.

The process is a cynical one. One whistleblower, asking that his name be withheld because he had "had it with publicity," described his experience.

At a departmental meeting he presented concerns about a design being developed by his agency, a problem obviously within the scope of his duties to help correct.

(Please turn to page 19)

GAP: Assistance and Protection for the Whistleblower

The Government Accountability Project traces back to the early 1970s when the Project on Official Illegality (POI) was formed at the Institute for Policy Studies. At first, POI concentrated solely on problems faced by national security whistleblowers such as Daniel Ellsberg and Victor Marchetti. But in 1976 POI widened its area of concern when research disclosed a pattern of illegality and whistleblowing that extended beyond the national security apparatus.

Outraged workers who locked horns with their agencies over harmful and irregular practices were turning up at the Departments of Health, Education and Welfare, Argiculture, Labor, Housing and Urban Development, Interior as well as several regulatory agencies. POI sought to encourage and support these federal employees.

In June 1977, POI held the first annual national conference on whistleblowing, bringing together federal employees, legislators, lawyers, journalists, union representatives and interested citizens to explore ways to expand and protect the disclosure rights of government workers.

Shortly after the conference, the name of POI was changed to Government Accountability Project (GAP) to reflect the organization's expanded concern about the breakdown in accountability of government toward the American public. GAP's first two projects were to develop model legislation, the "Openness in Government Act," and published *A Whistlelower's Guide to the Federal Bureaucracy.*

This past May, GAP held its second national conference on whistleblowing entitled, "Whistleblowing in National Security Agencies." The conference explored the special problems encountered by whistleblowers in national security agencies and included participants from the CIA, FBI, the armed forces, the Nuclear Regulatory Agency and municipal police departments.

Whistleblowers (Continued from page 13)

"After my slide exhibit, one official had me reshow my very first slide," he recounted. "When I did, he said, 'That is the last one I liked.' "

He was assigned temporarily, then permanently, to the supervisor who had expressed the most resistance to his ideas of design modification.

"My new job was humiliating. They had me taking notes at meetings. I was a highly paid stenographer," he said. He lost staff and his office.

He submitted a grievance and a year later had the results. "I had won. But the agency administrator received the recommendations, then supposedly reviewed the voluminous records and reversed the examiner. All in a single day."

He continued to pursue the issue of the design flaw. Six months after the reversal of his grievance he went to the White House about the defect. As he recalls, "No one was much interested." Two weeks later he was fired.

To date, this whistleblower has mortgaged his home and spent 15 years of retirement funds fighting for reinstatement. In the meantime, the faulty design has come back to haunt the agency. Whether corrections will gloss over or solve the problem is not known. There is no critic there to check.

When asked if he would do it again if given an opportunity, he shot back, "No! I followed the code of ethics for government workers. I *did* put loyalty to nation above loyalty to department. But I paid, and am paying, a heavy price. I should have thought about my family first. There won't be a next time. That is a truly sad commentary about this country."

Whistleblowers violate a powerful taboo. They have deserted their agencies for the enemy—the public. As a result, powerful interests are affected, interests that command far greater influence than any individual whistleblower can muster in opposition.

These interests may or may not form a conspiracy. There need be no communication or knowledge of common involvement among them. All have common goals—to discredit the whistleblowers, obscure the issues, encourage silence, and avoid embarrassment. And they are nearly always more powerful than the whistleblowers. History records few surrenders to one person armies.

A scandal made public has a ripple effect. Like precisely placed dominoes, a bureaucracy has a chain of command. If one wrongdoer falls, he or she may bump against and knock over others. The "others" are those in the bureaucracy who failed as managers to detect or investigate abuses. Rather than admit nonfeasance, they find it preferable to rally against the "boat-rocking" whistleblower.

By not "going along to get along" whistleblowers are not only locked into confrontation with misfeasants and nonfeasants, but also with the power brokers throughout the bureaucracy and private industry. When the House of Representatives turned down HEW's bid for a new flu inoculation program, partly because of whistleblowing on a previous program, HEW and FDA lost funds.

There is another group, not so directly affected, who, while they might be embarrassed for insufficient oversight, mainly are interested in a smooth-running bureaucracy. Whistleblowers disrupt this process. In this scheme everyone has a defined and narrow role to play. Adherence to the code of ethics for government employees and whistleblowing violates the established rules of the bureaucratic game. These bureaucrats would just as soon let those who create waves drown in the resultant wake.

Politics is the struggle of competing interests. Too often it is the public interest that is ignored. Whistleblowers represented that interest. When citizens—as consumers, participants in public interest groups or voters—are cut off from the information, they are disenfranchised. When government officials violate the public trust for private benefit, the taxpayers lose.

Whistleblowers serve the public as agents of government accountability. They are treated as pariahs by those bureaucracies that have ceased to serve the public. Yet the whistleblowers are the true heroes of the bureaucratic age. They are those very few, praised by Thoreau, who "serve the state with their consciences also, and so necessarily resist it for the most part, and are commonly treated as enemies by it."

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF MICHIGAN
817 FEDERAL BUILDING
DETROIT, MICHIGAN 48226

May 3, 1976

These are samples from my personal file at work

Mr. William B. Gray, Director
Executive Office for U. S. Attorneys
Department of Justice
Washington, D. C. 20530

Re: Vincent A. Laubach
Assistant U. S. Attorney

Dear Mr. Gray:

On May 5, 1976, Assistant U. S. Attorney Vincent Laubach will have completed an additional year of Federal service. Enclosed is a Form 52 requesting an increase for Mr. Laubach from his present salary of $26,900 to $28,600. This increase is consistent with your most recent salary schedule dated October 16, 1975.

Mr. Laubach joined our staff after completing his tour of duty as a trial attorney with the Tax Division of the Department of Justice. We specifically recruited Mr. Laubach to do complicated litigation with emphasis on major fraud trials. Since joining our staff, Mr. Laubach has been in trial almost continuously and has done an excellent job. He has had to work giant amounts of overtime in order to keep up with his trial schedule as well as prepare his complicated fraud cases for trial. As you know, working with fraud cases also requires that considerable time be spent with the investigators.

Mr. Laubach is a willing worker who gets along well with his associates, and is highly regarded by the judges and the court personnel. He is a real credit to our staff,

Re: Vincent A. Laubach
Assistant U. S. Attorney
Eastern District of Michigan

and we were very pleased when he made the decision to join this office after leaving the Tax Division.

Your favorable concurrence in this recommendation will be appreciated.

Sincerely,

RALPH B. GUY, JR.
United States Attorney

RBG/mp
Encs.

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF MICHIGAN
817 FEDERAL BUILDING
DETROIT, MICHIGAN 48226

April 18, 1977

Mr. William B. Gray, Director
Executive Office for U. S. Attorneys
Department of Justice
Washington, D. C. 20530

Re: Vincent A. Laubach
Assistant U. S. Attorney

Dear Mr. Gray:

Mr. Vincent Laubach will have completed another year of service with this office on May 23, 1977. I am asking that he be rated an "outstanding" Assistant U. S. Attorney and am requesting a salary increase of $1,000.00, raising his salary from $30,600.00 to $31,600.00. The appropriate Form 52 is attached hereto. This increase is consistent with your memorandum of October 16, 1976.

As his personnel file will reflect he joined our staff as an experienced attorney coming from the criminal tax section of the Department of Justice. For that reason he was assigned to the fraud section and has played a major part in our prosecution of both HUD violations and Welfare Fraud Cases. These are intricate cases. Mr. Laubach has done an excellent job with this category. He has devoted many hours of overtime to successfully handle his assignment, and has done so willingly. He is a most dedicated government employee.

Mr. John Conley, Chief of the Criminal Division concurs with this recommendation.

Very truly yours,

PHILIP VAN DAM
United States Attorney